**HON'BLE SRI G.S. SINGHVI, THE CHIEF JUSTICE**

**AND**

**HON'BLE SRI JUSTICE G. BHAVANI PRASAD**

**WRIT PETITION NO. 11934 OF 2005**

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**Between:**

Sri Gannamaneni Venkatrao

**……Petitioner**

**And**

The State of Andhra Pradesh,

Rep. by its Secretary, Government of A.P.,

Endowments Department, Secretariat,

Hyderabad and four others.

**……Respondents**

**:: JUDGMENT ::**

Counsel for the petitioners : Sri Venkateswara Rao Gudapati

Counsel for Respondent Nos. 1 to 4 : Government Pleader for Endowments

Counsel for Respondent No. 5 :Smt. N. Indrani

**Dated: 06-02-2006**

**Per G.S. SINGHVI, CJ**

In this petition, the petitioner prayed for quashing orders dated 07-03-2005 and 12-05-2005 passed by Assistant Commissioner, Endowments Department, Eluru (respondent
No. 4) and Regional Joint Commissioner, Multi Zone – I, Endowments Department, Kakinada (respondent No. 3) respectively.

The petitioner claims that he is a tenant of Ac.3-30 cents of dry land belonging to Sri Chakravarthula Tatacharyula Trust (respondent No. 5), which was leased out to him almost 35 years ago. He claims that during the pendency of the suit filed by respondent No. 5 for recovery of the arrears of lease amount, respondent No. 4 issued notice under Rule 3 of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Lease of Agricultural Lands Rules, 2003 (for short 'the Rules'), which provides for determination of status of landless person for the purposes of Section 82 of the Andhra Pradesh Charitable And Hindu Religious Institutions and Endowments Act, 1987 (for short 'the Act'). He filed reply stating

therein that he was cultivating the land for the last 35 years. However, without adverting to the core issue, which is germane to Rule 3 of the Rules, respondent No. 3 dismissed his petition and instructed the Executive Officer of respondent No. 5 to take possession and put the land to auction. Appeal filed against the order passed by respondent No. 3 was dismissed by respondent No. 2 vide his order dated 12-05-2005.

The principal ground on which the petitioner has challenged the legality of the impugned orders is that the same are violative of the provisions of Section 82 of the Act read with Rule 3 of the Rules. He has pleaded that he satisfies the conditions laid down in Rule 3 of the Rules and, therefore, the decision of respondent No. 3 not to treat him as landless poor person is liable to be declared as vitiated by an error of law apparent on the face of the record.

In the counter affidavit filed by respondent No. 3, it has been averred that the petitioner has cleared the arrears of rent on 11-06-2005, but he cannot be treated as landless poor person because the total land possessed by him is more than 5 acres. In support of his assertion, reference has been made to the suit filed by Sri Sitarama Swamy Temple, Madduru Village, Kovvuru Mandal, West Godavari District for recovery of the arrears of rent in respect of Ac.1-70 cents of land, which is pending in the Court of Principal Junior Civil Judge, Kovvuru (O.S No. 357 of 2002).

The petitioner has filed a rejoinder. In paragraph 3 thereof, he has categorically averred that he has surrendered the land of Sri Sitarama Swamy Temple as early as on 02-02-2001.

We have heard the learned counsel for the parties. Section 82(2) of the Act which provides for lease of agricultural lands and Rule 3 of the Rules which lays down the procedure for determination of the status of landless poor person read as under:

"**Section 82 (2) of the Act:**

**Lease of Agricultural Lands :--** (2) In respect of leases of agricultural lands held by landless poor person for not less than six years continuously, such person shall have the right to purchase such lands for a consideration of seventy five per centum of the prevailing market value of similarly situated lands at the time of purchase and such consideration shall be paid in four equal instalments in the manner prescribed. Such sale may be effected otherwise than by order-cum-public auction:

Provided that if such person fails to purchase the land in accordance with this sub-section or is unwilling to purchase the land, the lease shall be deemed to have been terminated.

**Explanation:--** For the purpose of this sub-section "landless poor person" means a person whose total extent of land held by him either as owner or as cultivating tenant or as both does not exceed 1.011715 hectares two and half acres) of wet land or 2.023430 hectares (five acres) of dry land and whose monthly income other than from such lands does not exceed two hundred and fifty rupees per mensum or three thousand rupees per annum. For the purpose of computing the extent of land 0.404686 hectares (one acre) of wet land shall be equal to 0.809372 hectares (two acres) of dry land.

**Rule 3 of the Rules:**

**(3) Determination of Landless poor person:--** (1) Immediately after coming into force of these rules, if any cultivating tenant claims to be a landless poor person, the Assistant Commissioner having territorial Jurisdiction shall enquire into and decide whether the cultivating tenant is a landless poor person as defined in Section 82 after giving a reasonable opportunity to the cultivating tenant and to the Executive Authority of the concerned institution or Endowment.

(2) If the cultivating tenant does not claim to be a landless poor person or if the Assistant Commissioner concerned determines that the cultivating tenant is not a landless poor person, the tenancy will be deemed to have been cancelled with effect from 28.5.1987 and the cultivating tenant shall be regarded as a tenant holding over thereafter.

A conjoint reading of the provisions reproduced above makes it clear that immediately after coming into force of the Rules, the Assistant Commissioner having territorial jurisdiction was required to make an enquiry regarding the claim of cultivating tenant to be treated as a landless poor person and then decide whether he falls within the definition of that expression. Sub-rule (2) of Rule 3 contains a deeming clause for cancellation of the tenancy with effect from 28-05-1987 if the

cultivating tenant does not make a claim for being declared as a landless person.

If order dated 07-03-2005 is examined in the light of the provisions noted above, it becomes clear that respondent No. 4 did not direct his attention to Rule 3 and passed order dated
7-3-2005 without taking into consideration the petitioner's assertion that he was in cultivating possession of Ac.3-30 cents of dry land for the last 35 years as a tenant of respondent No.5. The question whether the petitioner was in arrears of rent did not have any direct bearing on the determination of the issue relating to his status as landless poor person. Therefore, the mere fact that he had not paid rent for a long period could not lead to an inference that he did not fall within the definition of landless poor person. Unfortunately, respondent No. 3 also overlooked the salient features of Section 82 of the Act and Rule 3 of the Rules and dismissed the appeal preferred by the petitioner only on the ground that he had not paid the arrears of rent. In our opinion, the failure of respondents No. 4 and 3 to consider the issue relating to entitlement of the petitioner to be declared as landless poor person in a correct perspective with reference to the relevant statutory provisions has resulted in manifest injustice and, therefore, the impugned orders are liable to be set aside.

Learned Government Pleader and counsel representing respondent No. 5 made an attempt to persuade us not to annul the impugned orders by asserting that the petitioner was in possession of Ac.1-70 cents of land belonging to Sri Sitarama Swamy Temple, but we do not consider it proper to entertain the submission because there is no reference in the impugned orders to the petitioner's alleged possession of the land belonging to Sri Sitarama Swamy Temple, more so because in the rejoinder affidavit filed by him, the petitioner had categorically averred that he had surrendered that land in February, 2001.

In the result, the writ petition is allowed. Orders
dated 07-03-2005 and 12-05-2005 passed by respondents 4 and 3 respectively are quashed with liberty to respondent No. 4 to make fresh determination of the petitioner's status as a landless poor person. Needless to say that before passing a fresh order, respondent No. 4 will be required to give a reasonable opportunity of

hearing to the petitioner. The officer concerned shall pass appropriate order as early as possible, but latest within a period of four months from the date of receipt of a copy of this order. The parties are left to bear their own costs.

**G.S. SINGHVI, CJ**

**G. BHAVANI PRASAD, J**

06-02-2006

ks/svs